

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

500 BOYLSTON STREET
BOSTON, MASSACHUSETTS 02116-3740

TEL: (617) 573-4800

FAX: (617) 573-4822

www.skadden.com

DIRECT DIAL
(617) 573-4863
EMAIL ADDRESS

MICHAEL.HINES@SKADDEN.COM

FIRM/AFFILIATE OFFICES

CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WASHINGTON, D.C.
WILMINGTON


BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SAO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

December 11, 2019

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of Court is directed to terminate ECF No. 188. SO ORDERED.

BY ECF

Hon. Jesse M. Furman
United States District Judge
United States District Court
for the Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007



December 12, 2019

RE: Beach, et al. v JPMorgan Chase Bank, NA., et al., 17-cv-00563-JMF

Dear Judge Furman:

We represent Defendants in the above-referenced action. Pursuant to Paragraphs 3(A), 7(C) and 7(D) of Your Honor's Individual Rules And Practices In Civil Cases, and in connection with Defendants' Motion for Partial Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment, we write to request leave to file the combined memorandum of law in support of Defendants' Motion for Partial Summary Judgment and in opposition to Plaintiffs' Motion for Partial Summary Judgment (the "Memorandum") and the accompanying Local Civil Rule 56.1 statements with redactions. Furthermore, we request leave to file certain exhibits referenced in the Memorandum and Local Civil Rule 56.1 statements either under seal or with redactions, as identified on the list attached hereto.

The exhibits proposed to be sealed or redacted and the redactions in the Memorandum and Local Rule 56.1 statements reflect deposition testimony and documents referencing the confidential actions, deliberations, and analyses of a committee charged with monitoring the at-issue 401(k) plan's investments ("EPIC")

and the internal consultants who assist EPIC ("RPIG"). In a similar ERISA litigation, the court granted defendants' motion to seal portions of plaintiffs' filing that referenced "confidential actions and deliberations" of the committee responsible for monitoring that at-issue 401(k) plan and the advice of its third-party consultant, Mercer. *Baird v. BlackRock Institutional Tr. Co., NA.*, No. 17-cv-01892 (HSG), 2019 WL 4168906, at *17 (N.D. Cal. Sept. 3, 2019). The court held that the sealed information was sensitive and proprietary because it contained "business and financial information related to the operations" of the 401(k) plan sponsor. *Id.*; see also *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 612 (S.D.N.Y. 1998) (granting defendants' motion to seal because the information "to be sealed is confidential and [] the harm to defendants' competitive position that would result from disclosure outweighs the interest in public access"); *Playtex Prod., LLC v. Munchkin, Inc.*, No. 14-cv-1308 (RJS), 2016 WL 1276450, at *12 (S.D.N.Y. Mar. 29, 2016) (granting defendant's narrow motion to seal information that "references confidential and sensitive business information"). Like in *Baird*, Defendants' narrow proposed redactions contain sensitive and confidential information about how EPIC and its consultant RPIG execute their responsibilities and specifics about their investment decisions.

In accordance with Paragraphs 7.C. and 7.D. of Your Honor's Individual Practices, we are submitting to the Court for review the following documents:

- 1) an unredacted copy of the Memorandum and Local Civil Rule 56.1 statements;
- 2) a copy of the Memorandum and Local Civil Rule 56.1 statements highlighting the information that has been redacted in the ECF filing;
- 3) a copy of the exhibits on the list attached hereto; and
- 4) a copy of exhibits 53, 55, 57 - 61 highlighting the information that has been redacted in the ECF filing.

Respectfully submitted,

/s/ Michael S. Hines

Michael S. Hines

cc: All counsel of record

Exhibits: Under Seal or Redacted

<u>Exhibit</u>	<u>Document</u>
20.	March 15, 2011 CMDC Meeting Materials
21.	March 2012 CMDC Presentation Slides
22.	March 19, 2013 CMDC Meeting Materials
23.	March 18, 2014 CMDC Meeting Materials
24.	March 17, 2015 CMDC Meeting Materials
25.	March 15, 2016 CMDC Meeting Materials
26.	March 21, 2017 CMDC Meeting Materials
27.	March 20, 2018 CMDC Meeting Materials
28.	EPIC Charter, dated September 14, 2017
29.	EPIC New Member Orientation, June 2015
30.	December 17, 2010 EPIC Meeting Materials
31.	March 22, 2011 EPIC Meeting Materials
32.	March 19, 2012 EPIC Meeting Materials
33.	September 28, 2012 EPIC Meeting Materials
34.	April 25, 2013 EPIC Meeting Materials
35.	September 27, 2013 EPIC Meeting Materials
36.	December 6, 2013 EPIC Meeting Materials
37.	February 26, 2014 EPIC Meeting Materials
38.	May 22, 2014 EPIC Meeting Materials
39.	December 18, 2014 EPIC Meeting Materials
40.	March 31, 2015 Meeting Materials
41.	June 18, 2015 EPIC Meeting Materials
42.	September 22, 2015 EPIC Meeting Materials
43.	December 2, 2015 EPIC Meeting Materials

<u>Exhibit</u>	<u>Document</u>
44.	February 26, 2016 EPIC Meeting Materials
45.	May 26, 2016 EPIC Meeting Materials
46.	September 14, 2016 EPIC Meeting Materials
47.	December 2, 2016 EPIC Meeting Materials
48.	March 15, 2017 EPIC Meeting Materials
49.	June 5, 2017 EPIC Meeting Materials
50.	September 14, 2017 EPIC Meeting Materials
51.	December 5, 2017 EPIC Meeting Materials
52.	September 24, 2018 EPIC Meeting Materials
53.	Deposition of Terry Belton - <i>Redacted</i>
54.	Deposition of Bernadette Branosky 30(b)(6)
55.	Deposition of Bernadette Branosky - <i>Redacted</i>
56.	Deposition of Sally Durdan
57.	Deposition of Thelma Ferguson - <i>Redacted</i>
58.	Deposition of Angela Howard - <i>Redacted</i>
59.	Deposition of Robert King - <i>Redacted</i>
60.	Deposition of Walter Kress - <i>Redacted</i>
61.	Deposition of Roxanne Todisco - <i>Redacted</i>
64.	Angela Howard Notes
65.	Onsite Meeting Agenda and Notes, undated
66.	Portfolio Review with Notes, dated July 26, 2016
67.	Portfolio Review with notes, undated
68.	Portfolio Review, undated
69.	Robert King Notes, dated July 26, 2016
70.	Email Correspondence with BlackRock, dated January 15, 2015
71.	Email from A. Santos to EPIC members, dated September 8, 2017

<u>Exhibit</u>	<u>Document</u>
72.	Email and Attachment from Walter Theado re: Portfolio Review Follow Up, dated November 17, 2016
73.	Email from Blake Morris re: JPMC Core Bond Fund AUM-Performance, dated September 14, 2016
74.	Email from Blake Morris re: Materials for 4/27 Core Bond Fund Portfolio Review, dated April 25, 2016
75.	Email from D. Nese to EPIC members, dated June 2, 2017
76.	Email from Jennifer Walsh re: 04Q15 Updated Compliance Questionnaire, dated February 22, 2016
77.	Email from Kelly Arek re- Core Bond Materials, dated July 22, 2016
78.	Email from Kelly Arek re: Core Bond Presentation, dated January 11, 2016
79.	Email from Kelly Arek re: JPMC Onsite Meeting & Portfolio Review, dated June 14, 2016
80.	Email from M. Magee re: 4Q15 Compliance Questionnaire, dated February 8, 2016
81.	Email from Matthew Magee re: 1Q16 Compliance Questionnaire, dated May 10, 2016
82.	Email from Matthew Magee re: JPMC Plans - 1Q17 Compliance Questionnaire ,dated May 5, 2017
83.	Email from Robert King re: Core Bond Follow-Up, dated April. 8, 2016
84.	Email from Roxanne Todisco re: JPMC- Core Bond Portfolio Review, dated April 25, 2016
85.	Quarterly Regulatory and Compliance Questionnaire dated February 3, 2016
86.	Quarterly Regulatory and Compliance Questionnaire dated February 3, 2016
87.	Quarterly Regulatory and Compliance Questionnaire, dated May 9, 2016

<u>Exhibit</u>	<u>Document</u>
88.	Quarterly Due Diligence Questionnaire, dated February 4, 2016
89.	Quarterly Due Diligence Questionnaire, dated May 6, 2016
90.	Quarterly Due Diligence Questionnaire, dated May 8, 2017
97.	Core Bond Analysis, undated
98.	Core Bond Manager Change, dated March 31, 2016
101.	JPMorgan Chase & Co. Portfolio Review, dated October 20, 2015
102.	JPMorgan Chase Savings Plan Target Date Fund Discussion Document, dated January 18, 2011
103.	Mid Cap Value 401(k) Search, dated December 3, 2014
104.	Phonebook: Terry Belton's Profile, accessed April 22, 2013
105.	Portfolio Review, undated
106.	Portfolio Review, undated
107.	Responses from SSgA re: MidCap Offerings, undated
108.	SSgA Presentation "Holdings overlap between Mid and Large Cap Indices," undated
117.	June 12, 2018 EPIC Meeting Materials
118.	Deposition of Daniella Nese
119.	November 2015 Letter from Chase Corporate Benefits Re Important Legal Notices and Summary Plan Descriptions for JPMorgan Chase benefits plans
120.	Feb. 8, 2016 Fund Change Bulletin